HON'BLE SMT. JUSTICE T. MEENA KUMARI
AND
THE HON'BLE SRI JUSTICE G. CHANDRAIAH

WRIT PETITION No.16254 of 2007

Date 31-7-2007

Between:
The Director of Treasuries & Accounts,
Andhra Pradesh, Hyderabd and another.

.....
PETITIONERS

AND

D.P.R. Prasad,
Sub-Treasury Office, Guntur, Guntur District.

.....RESPONDENT

THE HON'BLE SMT. JUSTICE T. MEENA KUMARI
AND
THE HON'BLE SRI JUSTICE G. CHANDRAIAH

WRIT PETITION No.16254 of 2007

ORDER: (per Smt. T.Meena Kumari,J)

The Department filed the present writ petition seeking a Writ of Certiorari or any other Writ, Order or direction to call for the records relating to the order of the Tribunal passed in O.A. No.7570 of 2006, dated 16.5.2007 and to quash the same.

The brief facts of the case are that the respondent herein was working as a Sub-Treasury Officer in Guntur. While so, disciplinary proceedings were initiated against him. Thereafter, an enquiry officer was appointed to conduct enquiry into the matter. The enquiry officer submitted a report holding the charges as not proved. The disciplinary authority thereafter, issued proceedings dated 8.12.2006 reverting the respondent to the post of Senior Accountant for a period of four years with consequential punishment of postponement of increments. Aggrieved by the same, the respondent preferred O.A. No. 7570 of 2006 before the Tribunal. The Tribunal, by the order impugned in this writ petition, allowed the O.A. and set aside the proceedings impugned in the O.A. dated 8.12.2006. It also directed the Department to restore the respondent to his original position with all

consequential benefits. Aggrieved by the same, the Department filed the present writ petition.

The learned Government Pleader for Services-II appearing on behalf of the Department has contended that the Department has conducted the enquiry in a free and fair manner and the Tribunal ought not to have undertaken review of the same. He further submits that the Tribunal erred in holding that the finding of the disciplinary authority that the charged officer has tampered the record was baseless. He, therefore, prayed that the writ petition be allowed and the impugned order of the Tribunal be set aside.

On the other hand, Sri. S.A. Razak appearing on behalf of the respondent has supported the impugned order and submitted that the same does not require any interference.

The charge against the respondent reads thus:

> "that the said Sri D.P.R. Prasad, while working as S.T.O., Sub-Treasury, Gurazala, Guntur District has failed to undertake the required supervision of the work of his subordinates Sri S. Arun Kishore Babu, SA and Sri K. Ram Naik, JA who dishonestly manipulated the contingent records to show as if a person by name Sri B. Saida was working in the Sub-Treasury, Gurazala, Guntur District from 9/1989 to 1/2003 as part time Masalchi and thus violated sub-rule (5) of Rule 3 of A.P. Civil Services (Conduct) Rules, 1964."

According to the respondent, he joined as Sub-Treasury Officer, Gurajala only on 2.2.2002 and by that time B. Saida was working as part time Masalchi. However, during the inspection of Sub-Treasury Office, Gurazala, the Deputy Director, District Treasury, Guntur pointed out that the name of B. Saida was not recorded as Masalchi in the contingent register and when it was included subsequently, he asked the reasons for non-inclusion of the same in the contingent register. Then the respondent through proceedings

dated 22.12.2003 had called for the explanation of the staff of the Sub-Treasury Office, Gurazala to which, the staff members stated that the said Saida has been working as a Part-time Masalchi from 1989 onwards. So far as manipulation of records are concerned, the respondent stated that when the name of the individual was not incorporated in the contingent records by previous officers, he felt it necessary to incorporate the name of the person in whose favour the wages are being drawn and to obtain proper aquittance and accordingly incorporated the same. He further stated that he did not issue any appointment order to the said Saida. The enquiry officer on a perusal of the explanation offered by the respondent and after going through the material on record, submitted his report holding the charge as not proved. The disciplinary authority while disagreeing with the findings of the enquiry officer held the charges against the respondent as proved and accordingly issued proceedings dated 19.9.2006 calling upon the respondent to submit his representation, within a period of fifteen days from the date of receipt of the said memo. The respondent thereafter submitted his explanation to the said notice on 7.10.2006. The disciplinary authority having not satisfied with the explanation offered by the respondent, issued proceedings dated 8.12.2006 holding the charge as proved and accordingly reverted the respondent to the lower post of Senior Accountant for a period of four years from the date of communication of those orders with consequential punishment of postponement of his future increments.

In a given case, where the disciplinary authority is disagreeing with the findings of the enquiry officer, he has to record tentative reasons for such disagreement and then he can call for the explanation of the delinquent officer and basing on the explanation that would be submitted by the

delinquent, he can re-examine the whole issue afresh and pass final orders. Admittedly, in the instant case, the disciplinary authority while disagreeing with the findings of the enquiry officer did not record any tentative reasons for his disagreement with the findings of the enquiry officer. On the other hand, the disciplinary authority having come to the conclusion that the charges were proved, had issued notice to the respondent calling upon his explanation to the same. In the circumstances, there is infraction of Rule 21 of the A.P.C.C.A. Rules.

That apart, the enquiry officer in his report has clearly mentioned that the said B.Saida has been working in the office of S.T.O., Gurazala as Masalchi even prior to the assumption of charge by the respondent as Sub-Treasury Officer, Gurazala. He further observed that Smt. B. Rubi, Sri B. ramulu and Sri B. saida have worked one after other without any order of appointment and it is clear that the then S.T.Os. prior to D.P.R. Prasad (charged officer) were allowing workers without any resistance. The enquiry Officer further mentioned that the respondent deposed that the name of part time contingent worker who received wages was not recorded by the earlier officers in the contingent register, but on the other hand it was shown as received("muttinadi"). The respondent having felt that it was appropriate to mention the name of the person in whose favour the wages were being drawn to obtain proper aquittance as per the drawals made from the Sub-Treasury, has included the name of Saida in the contingent register. However, he did not issue any fresh appointment order to him. That apart the said Saida was functioning as Masalchi even before the respondent took charge as Sub-Treasury Officer on 2.2.2000 and till the deputy Director pointed out about the lapse during the course of inspection, the respondent

was not aware whether Saida was actually appointed as part time Masalchi or not. However, when he came to know about the same, he issued a notice to all the staff members and after receiving their statements, directed to include the name of Saida in the contingent register. Therefore, no malafides can be attributed to the respondent for inclusion of the name of Saida. Therefore, the finding of the disciplinary authority that the respondent had tampered and manipulated the records is baseless. That apart during the course of inspection when the Deputy Director pointed out about the aforementioned lapse, the respondent immediately issued notice to all the staff members and called for their explanations. In the circumstances, we are of the view that the alleged charge that the respondent failed to supervise the staff is not proved. Therefore, the Tribunal taking all these factors into consideration and on a reappraisal of the evidence on record, rightly allowed the O.A. and set aside the impugned proceedings dated 8.12.2006 of the disciplinary authority.

In the circumstances, we do not find any illegality or irregularity in the impugned order warranting interference.

The writ petition fails and is accordingly dismissed. No costs.

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T. Meena Kumari,J

Date: 31st July, 2007

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G. Chandraiah, J

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